

(2019) 11 MP CK 0144

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8912 Of 2017, 9095 Of 2017

Rekha Ahirwar And Ors

APPELLANT

Vs

Madhya Pradesh And Others And Ors

RESPONDENT

Date of Decision : 19-11-2019

Acts Referred:

Citation : (2019) 11 MP CK 0144

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : K.V.S. Sunil Rao, Punit Shroti

Final Decision : Allowed

Judgement

1. Regard being had to the similitude of the questions involved, the matters were analogously heard and decided by this common order.
2. The pivotal question in these cases is : whether the respondent department was justified in issuing the transfer order dated 06.07.2017 whereby the petitioners are transferred from their present place of posting ?
3. The singular ground raised by the learned counsel for the petitioners is based on Condition No.6 of the contract of appointment (Annexure-P/2). On the strength of this condition, it is argued that the petitioners being contractual employees were appointed for a particular place and in no circumstances, their transfer was permissible.
4. Shri Punit Shroti, learned P.L. for the State also raised singular ground to wriggle out of the said argument by contending that "2017 Contractual Human Resources Manual" came into being which contains the Condition No.8.3 pursuant to which transfer of a contractual employee became permissible. The petitioners themselves signed the contract wherein they accepted that change of service condition in the manual will be acceptable to them. Hence, it cannot be said that petitioners' services were not transferable.

5. No other point is pressed by learned counsel for the parties.

6. I have heard learned counsel for the parties at length and perused the record.

7. Condition No.6 of contract of appointment reads as under:

"संविदा महिला स्वास्थ्य कार्यकर्ता की नियुक्ति केवल किसी विषिष्ट स्थान के लिये होगी। किसी भी परिस्थितियों में उसका स्थानान्तरण नहीं किया जाएगा।"

8. The contract which was subsequently signed by the petitioners on which heavy reliance was placed by Shri Shrotri contains following conditions:

"संविदा सेवा की अन्य शर्तों हेतु राष्ट्रीय स्वास्थ्य मिशन की मानव संसाधन मैनुअल अगस्त 2014 एवं इसमें भविष्य में होने वाले (साथ ही पूर्व में हुये) संशोधनों के नियम लागू होंगे।"

[Emphasis Supplied]

9. This is trite law that service conditions of contractual employees are governed by the terms and conditions of contract. Indisputably, in the main contract (Annexure-P/2), it was made clear that the petitioners' appointment is for a particular place and "in no circumstances they will be transferred".

10. The condition No.7 of subsequent contract shows that the petitioners have agreed that their service conditions will be governed by Human Resources Manual of August, 2014 and any amendment made thereunder in the said manual. It is important to note here that this Manual of 2014 has not been produced by the respondents. In other words, no provisions of Manual of August, 2014 is brought to the notice of this Court which contains any stipulation/condition which permits the employer to transfer the employee beyond her place of initial posting/appointment. Emphasis is laid by learned Panel Lawyer on a condition of a Manual of 2017 and not of 2014. Thus, the Condition No.7 in which the petitioners have given consent to be governed by the Manual of 2014 is of no assistance to the respondents. In absence of showing any enabling provisions or terms of contract which permits the respondents to transfer the petitioners to a different place than the place of appointment, the impugned order cannot be countenanced. The impugned order of transfer is in clear breach of Clause 6 of appointment order (Annexure-P/2). The transfer order can be interfered with if it alters service condition of an employee. The breach of Clause 6 aforesaid amounts to altering the service condition of an employee.

11. Resultantly, the impugned order 06.06.2017 in both cases to the extent it relates to the petitioners are set aside. This order will not come in the way of the respondents in transferring the petitioners if condition of service so permits. Petitions are allowed to the extent indicated hereinabove.